



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR-DR, MNR-DR, MNDL, MNDCL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On September 15, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the Act) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I have reviewed all documentary evidence and I find the landlords have submitted three different versions of the first page of a 10 Day Notice.

...

I find I am not able to confirm which version of the 10 Day Notice was served to the tenants. I find that a participatory hearing is necessary to address this issue.

I have been delegated authority under the Act to consider the landlord's application for:

- Authorization to recover the filing fee from the other party pursuant to section 72
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- A monetary order for damage caused by the tenant, their pets or guests to the unit pursuant to section 67; and
- A monetary order for compensation for loss or other money owed pursuant to section 67.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords attended the hearing accompanied by an agent. The landlords were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord HK testified that he served each of the tenants with the Notice of Reconvened Hearing, the interim order and other related documents by registered mail on September 16, 2021. The tracking numbers for the mailings are recorded on the cover page of this decision. The tenants are deemed served with the Notice of Reconvened Hearing packages five days after they were sent by registered mail, or September 21, 2021 pursuant to sections 89 and 90 of the Act.

Pursuant to Rule 7.3 of the Rules of Procedure, this hearing was conducted in the absence of the tenants.

Preliminary Issues

The landlord testified that he was previously awarded an order of possession and that the tenants were removed from the rental unit by bailiffs on November 9, 2021. The file number is recorded on the cover page of this decision. The tenants did not provide the landlord with a forwarding address when they were removed by the bailiffs.

The landlord had filed an amendment seeking the monetary orders for damages to the rental unit and other costs associated with the eviction. The landlord was unable to serve the tenants with the amendment due to not knowing their forwarding address. Consequently, I dismissed the landlord's amendment with leave to reapply. I advised the landlords that in accordance with rule 4.2 and section 68 of the Act, I would consider their claim seeking additional rental arrears accruing since the original direct request was filed, since that claim could reasonably be anticipated by the tenants.

Further, I dismissed the landlord's application seeking an order of possession for unpaid rent since the tenancy has already ended and the tenants have vacated the rental unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlords submitted a copy of a residential tenancy agreement which was signed by the landlords and the tenants on July 26, 2021, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on August 1, 2021.

The landlord testified that the tenants failed to pay rent for the month of August, and the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. Following an expedited hearing before an arbitrator for an early end to tenancy, the landlord was awarded an Order of Possession on October 26, 2021. The tenants were removed from the rental unit by bailiffs on November 9, 2021. The landlord testified that the tenants did not pay any rent for the months of August, September, October or November and the landlord seeks to recover the arrears in rent.

Analysis

Based on the undisputed testimony of the landlord and the evidence before me, I find the tenants were obligated to pay rent in the amount of \$2,100.00 per month on the first day of each month and failed to do so, contrary to section 26 of the Act. Pursuant to sections 7 and 67 of the Act, the tenant's failure to comply with the Act led to a loss of rent to the landlords for **three months and nine days**, from August 1 to November 9, 2021. As such, the landlord is entitled to compensation in the amount of [$\$2,100.00 \times 3 \text{ months} + (\$2,100.00 / 30 \text{ days} \times 9 \text{ days} = \$690.00) = \$6,990.00$].

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The status of the tenants' security deposit and pet damage deposit are unclear to me, based on the notes written on the tenancy agreement. As such, I decline to grant an order allowing the landlords to retain a portion of the deposits in partial satisfaction of the monetary order.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$7,090.00. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 11, 2022